

National Wildlife Refuge System Non-Federal Oil and Gas Proposed Rule

Frequently Asked Questions

What action is the U.S. Fish and Wildlife Service taking?

The U.S. Fish and Wildlife Service (Service) is announcing a proposed rule and draft environmental impact statement (EIS) to revise existing regulations governing the management of non-federal oil and gas development on National Wildlife Refuge System lands.

The rule proposes to implement a higher and more consistent level of protection for Refuge System resources and uses from the effects of non-federal oil and gas-related development activity. This effort is part of the Service's ongoing commitment to avoid or minimize adverse effects on natural and cultural resources and wildlife-dependent recreation associated with oil and gas development activities, ensure a consistent and effective regulatory environment for oil and gas operators and protect public health and safety.

Why is the Service proposing revising regulations for governing non-federal oil and gas activities within the boundaries of Refuge System lands?

The existing non-federal oil and gas regulations have remained unchanged for more than 50 years since the regulations first published in the *Federal Register* at 50 CFR 29.31 in August 1960, and remained unchanged with the publication of all of the regulations governing the Refuge System under the [National Wildlife Refuge System Administration Act of 1966](#) in the *Federal Register* at 50 CFR 29.32 in December 1966.

This proposed rule would ensure that non-federal oil and gas operations are conducted in a manner that avoids or minimizes impacts to refuge resources and uses by providing: regulatory clarity and guidance to oil and gas operators and refuge staff; a simple process for compliance; and flexibility to incorporate technological improvements in exploration and drilling technology across different environments. The proposed rule makes the regulations consistent with existing laws, policies and industry practices.

What are the effects of oil and gas activities on refuges?

Oil and gas development on wildlife refuges is an industrial activity with many associated impacts on wildlife and the environment including habitat loss and degradation, reduced air and water quality, wildlife mortality and displacement, and introduction of invasive and non-native species, compromising ecological integrity.

The intrusion of invasive species due to land disturbance by oil and gas development has increased the risk of wildfire, which threatens public health and safety as much as it threatens natural and cultural resources. Exposed oil caused by chronic leaks and spills and in open-topped storage tanks and other containment vessels at oil production facilities has attracted songbirds and other wildlife and caused mortality. Abandoned infrastructure and debris has led to health and safety risks to visitors on refuges and is at odds with the purposes of refuges to offer a natural experience.

The time, place and manner of activities associated with oil and gas development can have significant negative impacts on refuge resources and uses, but can also largely be avoided. For instance, many times a well pad can be located to avoid ecologically sensitive areas of a refuge while still providing an operator access to their minerals, or construction of roads and well pads can be timed so it does not occur during critical nesting seasons for birds. In addition, proper signage and security measures can alert visitors to the hazards associated with a particular oil and gas operation.

The proposed rule would provide the Service the necessary tools to work with operators through a permitting process to avoid these impacts. The rule would also allow refuge managers to prescribe measures to prevent or minimize these impacts. Importantly, ensuring that operators are responsible for reclaiming and restoring

habitat disturbed or destroyed by these activities will ensure that refuge resources and uses are protected for wildlife and future generations of Americans.

How many national wildlife refuges have oil and gas operations? Are they all active?

There are approximately 5,000 oil and gas wells on more than 100 national wildlife refuges. Of these, almost 1,700 wells are currently active. The majority of active wells found on refuge lands are producing natural gas. Fewer than 260 active wells are producing oil. There are an estimated 450 unplugged wells and unrestored sites on Refuge System lands that no longer have a known operator.

What are the key requirements for operators under the proposed rule?

Under the proposed rule, the Service would require the following:

- **New operations are by permit only.** Operators conducting new operations or modifying their existing operations in a manner that will have additional impacts on refuge resources beyond the scope, intensity, and/or duration of existing impacts must obtain an operations permit before commencing new or modified operations within a refuge. This requirement addresses exploration, drilling, production, enhanced recovery operations, transportation, plugging and reclamation operations.
- **Operations under an existing Service permit** may continue under the terms of that permit as long as they comply with existing federal, state and local laws and regulations, and the general terms and conditions outlined in their permit and this rule. Operators would be required to obtain a new permit or amend their existing permit if they propose to conduct new operations or modify their existing operations (i.e., propose activities outside the scope of their existing approval that would have impacts on refuge resources as determined by the Service). At the time of reclamation, the Service would review existing permits and modify them as necessary to ensure compliance with all Service reclamation standards.
- **Operations not under a Service permit** and being conducted prior to the effective date of the final rule, or prior to a boundary change or establishment of a new refuge unit, would be considered “pre-existing operations” and may continue to operate as they have been as long as they comply with existing federal, state and local laws and regulations, and the general terms and conditions outlined in this proposed rule. However, these operations would be required to obtain a permit if they propose to conduct new operations or modify their operations in a manner that will have additional impacts on refuge resources.
- All operators must have a **permit for plugging wells and reclamation activities** and comply with all Service reclamation standards.
- **Wells drilled from outside refuges or on non-federal inholdings** to access non-federal minerals would be exempt from these regulations. However if an operator needs to cross federally owned or managed land or water to access non-federal minerals, they would be required to obtain an operations permit for new access or amend existing authorization for access in compliance with the proposed regulations.

As a member of the public who visits national wildlife refuges, how does this proposed revision benefit me?

The Service is proposing to revise regulations governing the exercise of non-federal oil and gas rights in order to improve the agency’s ability to protect refuge resources, visitors and the general public’s health and safety from potential impacts associated with non-federal oil and gas operations located within Refuge System lands. These proposed regulations would help ensure that visitors’ experience on national wildlife refuges would be impacted as minimally as possible by non-federal oil and gas operations.

For example, the Service would work with operators to ensure that the time, place and manner of any new operations would not interfere with opportunities for wildlife-dependent recreational uses through requirements such as locating well pads away from high use areas, use of noise abatement technology, or timing disruptive activities to ensure they do not interfere with visitor use to the maximum extent practicable.

Why are there non-federal oil and gas wells on Refuge System lands?

Oil and gas wells exist on Refuge System lands in situations where the Service does not own the rights to the subsurface minerals, either because:

- The United States acquired property from an entity that did not own the oil and gas rights; or
- The United States acquired the property from an entity that did not convey the oil and gas rights with the sale.

Unique to Alaska, mineral rights are part of land interests conveyed to native corporations under the Alaska Native Claims Settlement Act, or held by the state of Alaska and other private landowners.

Why does the Service acquire land without purchasing the mineral rights?

Several factors influence the purchase of land without mineral rights. Service policy is to purchase only what is necessary to accomplish its conservation mission. In many cases, it would be prohibitively expensive to purchase the mineral rights. Often, the mineral rights have already been sold and belong to someone other than the present surface landowner. In other cases, the surface landowner does not wish to sell the mineral rights.

Who can own mineral rights to refuge lands?

Non-federal mineral rights can be owned by individuals, corporations, state or local governments, or tribes.

What authority does the Service have to regulate privately owned minerals like oil and gas?

The authority of Congress to provide for the regulation of non-federal oil and gas operations on Refuge System lands is derived from the Property Clause of the United States Constitution. Specifically, the Service has been provided the statutory authority to manage federal lands and resources under the National Wildlife Refuge System Administration Act of 1966, as amended by the [National Wildlife Refuge System Improvement Act of 1997](#), which grants the Service the authority to establish regulations to protect Refuge System lands and uses. The proposed regulations provide reasonable access to non-federal oil and gas rights holders.

Although the Service would place refuge-protecting mitigation measures on proposed operations, the agency does not intend that implementation of these regulations would result in a denial of access to prospective operators to exercise their private oil and gas rights. The Service would work with operators to ensure they have reasonable access to their operations and that refuge resources and uses are also protected to the maximum extent practicable.

Why does the Service need to manage oil and gas activities on refuges when the states already regulate such activities?

The Refuge System is the nation's premiere system of lands managed specifically for wildlife and wildlife habitat, encompassing more than 150 million acres in 563 refuges and 38 wetland management districts. The Service's legal mandates and regulatory requirements in relation to wildlife refuges exceed state responsibilities.

State oil and gas commissions have a different mission than the Service. State commissions are charged with administering oil and gas permits, while providing some level of protection to the surface owners. In

addition, while state regulations provide an important set of environmental protections, they vary widely with regard to protection of other surface resources and surface use conflicts and generally leave the details to be worked out between the surface owner, in this case the Service as surface manager, and the operator. Therefore, the proposed regulations are intended to complement State regulations, ensuring that protection of refuge resources and uses from impacts associated with oil and gas activities are consistent across the nation.

What does the draft EIS evaluate?

The draft EIS analyzes the potential impacts of three alternatives for managing non-federal oil and gas operations on Refuge System lands and any waters within the boundaries of the refuge. These alternatives include: the no-action alternative, and two action alternatives involving revisions to the existing regulatory provisions contained within Title 50 of the Code of Federal Regulations (CFR), Part 29, Subpart C (29C). The EIS provides an assessment of the impacts that could result from the no-action alternative (continuing under the current regulations) or implementation of either of the action alternatives.

The National Environmental Policy Act (NEPA) requires federal agencies to explore a range of reasonable alternatives that address the purpose and need for the action. The alternatives analyzed in this document, in accordance with NEPA, are the result of internal and public scoping. Upon conclusion of the EIS and decision-making process, one of the alternatives, or a combination of different parts of the various alternatives, could be adopted through a rulemaking process.

This EIS is programmatic in nature, which means that it provides a framework for taking a range of actions, but that actions relating to new non-federal oil and gas development would require more site-specific analyses before they could be permitted. In implementing these proposed regulatory revisions on specific Refuge System lands and waters, additional analyses and environmental compliance, including consultation and an opportunity for public comments, would be completed under a separate NEPA and decision-making process.

How can I provide comments?

Written comments and information can be submitted by one of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. [FWS-HQ-NWRS-2012-0086]; or
- U.S. mail or hand-delivery: Public Comments Processing, Attn: [FWS-HQ-NWRS-2012-0086]; Division of Policy, Performance, and Management Programs; U.S. Fish and Wildlife Service, MS: BPHC; 5275 Leesburg Pike; Falls Church, VA 22041-3803.

Since this is a formal rulemaking process with subsequent National Environmental Policy Act support, the Service anticipates this effort will take at least three years to complete.

The proposed rule and draft EIS will publish in the *Federal Register* on December 11, 2015. Comments must be received within 60 days, on or before February 9, 2016. The Service will post all comments on <http://www.regulations.gov>. This generally means the agency will post any personal information provided through the process. The Service is not able to accept email or faxes.

The Service expects to finalize the regulations in spring 2016.

Where can more information be found online?

For more information, please visit: <http://www.fws.gov/refuges/oil-and-gas/>.